

**MEMORANDUM OF AGREEMENT BETWEEN THE
SANTA FE PUBLIC SCHOOL DISTRICT AND SANTA FE COUNTY
REGARDING WATER LINE FOR USE AT TURQUOISE TRAIL CHARTER SCHOOL**

THIS MEMORANDUM OF AGREEMENT ("Agreement") is entered into on this 7 day of June, 2011, by and between Santa Fe County (hereinafter referred to as the "County"), a New Mexico political subdivision, and the Santa Fe Public School District (hereinafter referred to as the "District"), a New Mexico political subdivision.

RECITALS:

WHEREAS, the Santa Fe County Public Utilities Division is responsible for water planning county wide, providing backbone (master plan) infrastructure design review, approval, and final acceptance of constructed infrastructure in accordance with the County's design requirements; and

WHEREAS, the District desires to have a sustainable and safe public water line connection to the County's public water supply for purposes of providing fire protection, irrigation, and drinking water at Turquoise Trail Charter School; and

WHEREAS, the current County waterline terminates adjacent to the County's Detention Center, located south of I-25 and immediately east of NM 14; and

WHEREAS, a public water line to feed Turquoise Trail Charter School will require extension approximately 14,000 linear-feet and must be 12-inch minimum in diameter and 16-inch maximum in diameter.

NOW, THEREFORE, it is mutually agreed between the parties as follows:

1. SCOPE OF AGREEMENT.

A. The District will undertake and pay for the engineering design and construction of a 12" diameter main distribution public water transmission line, approximately 14,000 linear feet, along the east side of NM 14, within NMDOT R-O-W, east roadway shoulder, including an east-west segment between NM 14 that will connect with the water system on the property of Turquoise Trail Charter School.

B. The proposed waterline project will be designed and installed by the District in two phases. Phase I includes planning, design, environmental clearances, permitting, and project letting. Phase II includes award of project, pre-construction activities, construction management, waterline construction, substantial completion, final acceptance, and 1-year warranty.

C. The District shall be responsible for all engineering, construction management, and construction costs, including construction observation by a qualified person under the supervision of a New Mexico professional engineer, to verify that the constructed project complies with the County's design and construction standards and specifications.

Engineering drawings and technical specifications must be approved by Santa Fe County prior to construction.

D. The County shall provide a qualified Utilities Project Manager, appointed to facilitate the waterline planning and design review process, final construction drawing approval, final project acceptance, and serve as Liaison between the County and the District's designee. The Utilities Project Manager will be available to attend meetings with NMDOT District 5 and other state agencies as necessary, and as requested by the District's designee.

E. The District shall maintain detailed accounting of all expenses incurred for the approved project and shall submit an itemized record to the County for their records at the conclusion of construction together with as-built record drawings stamped by a New Mexico professional engineer or professional surveyor.

F. Upon Completion of construction the District will turn over ownership of the infrastructure and accompanying rights-of-way and warranties to the County, and upon acceptance of the installation, the County shall provide water service to Turquoise Trail Charter School, capable of delivering a minimum flow rate of 2,500 gallons per minute, at 50 pounds per square (PSI) inch of residual pressure. The District, specifically Turquoise Trail Charter School, will become a customer of the County's water system once construction is accepted by the County as complete.

G. The County will only be obligated to accept ownership and maintenance of the water line if the following conditions are met:

- i. the District pays for all costs associated with the design and construction of the water infrastructure in accordance with plans and specifications approved by the County;
- ii. the District conveys the water infrastructure and all associated easements, rights-of-way and permits associated with that system to the County together with a one year warranty of the completed project;
- iii. the District provides the County with all as-built record drawings of the water infrastructure, sealed by a New Mexico professional engineer or professional surveyor, as well as a certification by such engineer that all work was completed in accordance with approved construction documents;
- iv. the District shall permanently disconnect the well from the drinking water plumbing, to prevent any type of cross contamination of the public water supply. The District may continue to use the well as a source of irrigation water, if a backflow prevention device acceptable to the County is installed. Alternatively the District may cap the well prior to the County accepting ownership and maintenance of the water line.

2. COMPENSATION.

A. The Parties agree that the District only requires an 8" diameter water line for its purposes and that the District is over-sizing the water line by installing a 12" diameter water line on behalf of the County. Upon acceptance of ownership, the County shall grant the District credit for the costs of material and labor, plus applicable gross receipts taxes, that may be incurred to construct said improvements at the 12" size rather than the 8" size. The amount of the credit shall be based on actual construction costs of items identified as being the responsibility of the County as shown on Exhibit A to this agreement. The credit will be used as an offset to any connection charges, service fees and water service charges owed the County by the District and shall be reflected as an accounting adjustment to the District's water use account with the County. The District shall receive from the County monthly invoices reflecting any credits owed by the County to the District as a result of this Agreement.

B. The District shall pay all costs associated with design and construction of the improvements, and begin payments for all water supply services received from the County, once the credit amount has been exhausted, at the rates established by the County for customers of the same class as the District.

3. EFFECTIVE DATE AND TERM.

This Agreement shall, upon due execution by all parties, become effective as of the date first written above and shall terminate one year after the County accepts ownership of the improvements, unless earlier terminated pursuant to Section 4 or 11, "Termination" or "Appropriations" of this Agreement.

4. TERMINATION.

This Memorandum of Agreement may be terminated by either of the parties hereto upon written notice delivered to the other party at least thirty (30) days prior to the intended date of termination. By such termination, neither party may nullify obligations already incurred for performance or failure to perform prior to the date of termination.

5. PERSONNEL.

A. The District represents that it has, or will secure at its own expense, all personnel required to perform all of the services required of it under this Agreement. Such personnel shall not be employees of or have any contractual relationships with the County.

B. All services required hereunder will be performed by the District and all personnel engaged in the work shall be fully qualified and shall be authorized or permitted under state and local law to perform such services.

6. NO THIRD-PARTY BENEFICIARIES.

This Agreement was not intended to and does not create any rights in any persons or party not a party to this Agreement.

7. LIABILITY.

Neither party shall be responsible for liability incurred as a result of the other party's acts or omissions in connection with this Agreement. Any liability incurred in connection with this Agreement is subject to the immunities and limitations of the New Mexico Tort Claims Act, § 41-4-1, et seq., NMSA 1978, as amended.

8. AMENDMENT.

This Memorandum of Agreement shall not be altered, changed, or amended except by instrument in writing executed by the parties hereto.

9. INTEGRATION CLAUSE.

This Agreement incorporates all the covenants and understandings between the parties hereto concerning the subject matter hereof, and all such covenants and understandings have been merged into this Agreement. No prior covenants or understanding, verbal or otherwise, of the parties or their agents shall be valid or enforceable unless embodied in this Agreement.

10. APPLICABLE LAW; VENUE.

This Agreement shall be construed in accordance with the laws of the State of New Mexico. The District and the County agree that the exclusive forum for any litigation between them arising out of or related to this Agreement shall be the State District Court of New Mexico, First Judicial District, located in Santa Fe County.

11. APPROPRIATIONS.

This Agreement is contingent upon sufficient appropriations and authorizations being made by the Santa Fe County Board of County Commissioners and if state funds are involved, the Legislature of the State of New Mexico. If sufficient appropriations and authorizations are not made in this or future fiscal years, this Agreement shall terminate upon written notice by the County to the District. Such termination shall be without penalty to the County, and the County shall have no duty to reimburse the Santa Fe Public Schools for expenditures made in the performance of this Agreement. The County is expressly not committed to expenditure of any funds until such time as they are programmed, budgeted, encumbered and approved for expenditure by the County. The County's decision as to whether sufficient appropriations and authorizations have been made for the fulfillment of this Agreement shall be final and not subject to challenge by the District.

12. FASCIMILE SIGNATURES.

The parties hereto agree that a facsimile signature has the same force and effect as an original for all purposes.

13. INVALID TERM OR CONDITION.

If any term or condition of this Agreement shall be held invalid or unenforceable, the remainder of this Agreement shall not be affected and shall be valid and enforceable.

14. NOTICES.

Any notice required by this Agreement shall be given in writing to the parties designated below. Notice shall be effective when delivered personally to any party, or three business days after deposited, postage fully prepaid, registered or certified, in an official receptacle of the U.S. Postal Service.

For the District: Santa Fe Public Schools
c/o Bobbie Gutierrez, Superintendent
610 Alta Vista Street
Santa Fe, NM 87505

For the County: Santa Fe County Public Utilities Division
Patricia Guerrerortiz, Division Director
424 NM 599/P.O. Box 276
Santa Fe, NM 87504

15. Survival.

The provisions of following paragraphs shall survive termination of this Agreement; NO THIRD-PARTY BENEFICIARIES, APPLICABLE LAW, COMPENSATION, VENUE, LIABILITY, SURVIVAL.

IN WITNESS WHEREOF the parties have duly executed this Agreement as of the date written above.

SANTA FE COUNTY;

SCHOOL BOARD:

Katherine Miller
Santa Fe County Manager

Barbara Gudwin
Board President

APPROVED AS TO FORM:

ATTEST.

Stephen C. Ross
Santa Fe County Attorney

Linda M. Trujillo
Linda M. Trujillo
Board Secretary

FINANCE DEPARTMENT:

Teresa Martinez
Teresa Martinez
Santa Fe County Finance Director

Santa Fe County Utilities Department
Project Cost Sharing Estimate

Exhibit A

12" Water system extension South 12,150' on HWY 14 from Existing 12" waterline North of SFC Jail to Turquoise Trail Charter School
As-built quantities shall prevail
6/1/2011

1	Existing Pavement, Asphalt Concrete, Remove & Dispose, incl saw cut	SY	95	\$14.00	\$1,330.00
2	Subgrade Preparation, 12" @ 95% compaction	SY	95	\$3.00	\$285.00
3	Aggregate Base Course, Crushed 6" @ 95% compaction	SY	95	\$15.00	\$1,425.00
4	Residential Asphalt Concrete, incl Track Coat and placement	SY	95	\$23.00	\$2,185.00
5	Boring & Casing, carrier pipe not incl	LF	100	\$80.00	\$8,000.00
6	Carrier Pipe incl spacers, restraints & end seals	LF	120	\$10.00	\$1,200.00
7	6" Waterline incl. Trenching & compacted backfill to 6' depth, trace wire	LF	65	\$12.00	\$780.00
8	8" Waterline incl. Trenching & compacted backfill to 6' depth, trace wire (Cam. Justice)	LF	660	\$18.00	\$11,880.00
9	8" Waterline incl. Trenching & compacted (reduced price 12" WL v. 8")	LF	13439	\$5.00	\$67,195.00
10	Fire Hydrant 4' bury, MJ incl. blocking & aggregate (full price hydrants)	EA	2	\$2,000.00	\$4,000.00
11	Fire Hydrant 4' bury, MJ incl. blocking & aggregate (reduced price hydrant v. flushing valve)	EA	5	\$1,175.00	\$5,875.00
					<u>\$104,155.00</u>
					Subtotal
					\$104,155.00
					Subtotal Estimated Construction Cost
					\$104,155.00
					Total Estimated Project and Construction Cost
					\$104,155.00

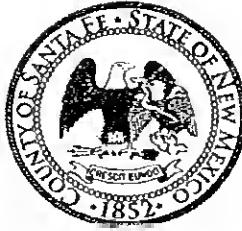
Harry B. Montoya
Commissioner, District 1

Virginia Vigil
Commissioner, District 2

Michael D. Anaya
Commissioner, District 3

Kathy Holian
Commissioner, District 4

Liz Stefanics
Commissioner, District 5



MEMORANDUM

Date: June 13, 2011

To: Katherine Miller, County Manager

Via: Stephen Ross, County Attorney

From: Patricio Guerrerortiz, PE, Utilities Director

Re: Turquoise Trail Charter School-Santa Fe Public Schools

The attached agreement was written in response to a request from the Santa Fe Public Schools District, to allow the District to install the infrastructure needed to provide drinking water and fire protection to the Turquoise Trail Charter School. The school is located approximately 3 miles south of the end of our existing water infrastructure, on New Mexico Highway 14.

We worked with the District representatives for several months, assisted them in making the right choice on their project, between two options: one that required the installation of a new water treatment and storage facility for the school to continue to use their domestic well, and another one that required them to extend the existing water system south and eliminate the use of their well. As you know, the District had to pursue one alternative or the other, after they discovered high concentration of undesirable constituents in their ground water.

The agreement was conceived as one in which the District would pay for the minimum improvements required to extend County water service to the school, while the County would contribute the cost of any over-sizing deemed necessary to meet the future needs of county utility customers.

No upfront disbursement of funds would be necessary, however, and the extra cost of over-sizing the improvements would be refunded to the District by the County in the form of service rate credits. While the total amount to be refunded, currently estimated at \$104,000 (based on the low bidder's proposal), would take several years to be paid back in full, the County would be deeded the new facilities as soon as they are acceptable as completed in compliance with the design documents.

The District's contractor was awarded the project several months ago, after the school advertised the project for bids, in an attempt to "test" whether or not their funding was adequate, and while we finalized the County-District agreement. Today, the District would like to begin construction as soon as possible, but beginning of construction hinges upon the completed agreement. Thank you for your attention and action on this matter, and please call me by phone or email if you would like any additional information.